

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

NEW MEXICO CATTLE GROWERS'
ASSOCIATION,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Defendants,

and

AMIGOS BRAVOS, NEW MEXICO
ACEQUIA ASSOCIATION, and GILA
RESOURCES INFORMATION
PROJECT,

Intervening Cross-Claimants-Defendants,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Cross-Defendants.

Case No. 1:19-cv-00988-RB-SCY

JOINT/UNOPPOSED MOTION TO FURTHER EXTEND STAY

Pursuant to this Court's May 26, 2021 Order directing the Parties to "file either a joint motion or separate proposals to further govern proceedings no later than July 1, 2021," Dkt. No. 66, and D.N.M.LR-Civ 7.2, Defendants/Cross-Defendants (the "Agencies") and Plaintiff jointly move to extend the stay by three months, extending the end of the stay from July 1 to

October 1, 2021. Intervening Cross-Claimants-Defendants (“Intervenors”) do not oppose the motion. The Agencies and Plaintiff have good cause for this request:

1. In this proceeding, Plaintiff challenges two rules promulgated by the Agencies that define the phrase “waters of the United States” in Section 1362(7) of the Clean Water Act: the Definition of “Waters of the United States” – Recodification of Pre-Existing Rules, 84 Fed. Reg. 56,626 (Oct. 22, 2019) (“2019 Rule”), and the Navigable Waters Protection Rule: Definition of “Waters of the United States,” 85 Fed. Reg. 22,250 (Apr. 21, 2020) (“NWPR”). Intervenors challenge the NWPR.

2. Plaintiff initiated this lawsuit on October 22, 2019, first challenging the 2019 Rule. Dkt. No. 1. On April 27, 2020, Plaintiff filed its Supplemental Complaint, which challenges both the NWPR and the previous 2019 Rule. Dkt. No. 26. The Agencies answered on June 29, 2020. Dkt. No. 36.

3. Intervenors filed their Cross Complaint on June 30, 2020. Dkt. No. 38. The Agencies answered on August 31, 2020. Dkt. No. 53.

4. On May 26, 2020, Plaintiff moved to preliminary enjoin portions of the NWPR. Dkt. No. 30. Briefing on that motion was complete in July, 2020. *See* Dkt. No. 45. On February 10, 2021, the Court denied Plaintiff’s preliminary injunction motion without prejudice and granted the Parties’ joint motion to stay proceedings. Dkt. No. 59.

5. Since then, the Agencies sought, and the Court granted, two extensions of the stay while the Agencies reviewed the NWPR. Dkt. Nos. 60, 64, 65, 66. Unless extended, the stay expires July 1, 2021. *See* Dkt. No. 66.

6. There are no other outstanding motions or deadlines before the Court in this matter.

7. On January 20, 2021, President Biden issued an Executive Order entitled “Executive Order on Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis.” 86 Fed. Reg. 7037 (Jan. 25, 2021). In conformance with the Executive Order, the Agencies began reviewing a number of regulations promulgated in the last four years, including the NWPR at issue in this case.

8. On June 9, 2021, the Agencies issued a press release stating that, after reviewing the NWPR, they have decided to initiate new rulemaking to revise the definition of “waters of the United States.” See <https://www.epa.gov/newsreleases/epa-army-announce-intent-revise-definition-wotus> (last accessed June 29, 2021).

9. In light of this new rulemaking, the Agencies and Plaintiff jointly move to extend the stay in the proceeding by another three months, until October 1, 2021, when the Parties can then reassess how this litigation should proceed. By October 1, 2021, the Parties will file a joint status report and proposal(s) to further govern proceedings. As Intervenor(s) do not oppose the motion, granting this motion will not prejudice any party and would promote judicial economy.

10. To be sure, the Agencies have filed motions to remand the NWPR without vacatur in a number of other proceedings where the NWPR is being challenged. See *Navajo Nation v. Regan*, 2:20-cv-00602-MV-GJF (D.N.M.) at Dkt. No. 32 (June 22, 2021); *Waterkeeper Alliance v. Regan*, 3:18-cv-03521-RS (N.D. Cal.) at Dkt. No. 111 (June 22, 2021); *Conservation Law Found. v. EPA*, 20-cv-10820-DPW (D. Mass.) at Dkt. No. 113 (June 9, 2021); *S.C. Coastal Conservation League v. Regan*, 2:20-cv-01687-BHH (D.S.C.) at Dkt. No. 140 (June 21, 2021).

Notwithstanding these filings, the Parties here agree that it would be appropriate to further hold this litigation in abeyance for now. The Agencies may decide to file a similar motion to remand the NWPR in this proceeding at a later date.

11. Accordingly, the Agencies and Plaintiff jointly request to stay this proceeding until October 1, 2021. This joint/unopposed motion is without prejudice to the right of any party to seek a further stay at the end of the abeyance period. The Parties retain the right to move this Court to lift the stay prior to the end of the abeyance period if circumstances warrant resuming litigation.

For the foregoing reasons, the Agencies and Plaintiff respectfully request that the Court stay this proceeding until October 1, 2021. The Parties will file a joint status report and proposal(s) to further govern proceedings by no later than October 1, 2021.

Dated: June 30, 2021.

Respectfully submitted,

/s/ Hubert T. Lee
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CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2021, I electronically transmitted the foregoing to the Clerk of Court using the ECF system for filing and transmittal of a Notice of Electronic Filing to registered counsel for all parties.

/s/ Hubert T. Lee